IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWELFTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 14851 of 2006

Between:

S.K.Akbar S/o Silar,

Muslim, 42 years, Occu: Unemployee,

JkD.No.7-293/1, Masque Street,

Sallurupet, Nellore DIstrict

..... PETITIONER

AND

1. The Southern Railway rep. By its

Asst. Engineer, Engineering Works,

Sullurupet, Nellore District

2. The Inspector of Works (IOW)

O/o. Section Engineer Works, Sullurpet,

Nelore District

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of Mandamus or any other appropriate writ declaring the action of the respondents in marking three feet of the petitioner sitE in western side adjoining to railway track and bounded by with railway property stone as illegal, arbitrary, and consequentially direct the respondents not to meddle with the patta property of the petitioner and pass such other or further order as this Hon'ble Court may deem fit and proper in the

circumstances of the case.

Counsel for the petitioner: Mr.P.N.Jagan Mohan Rao

Counsel for respondents : Mr.R.S. Murthy, (S.C. for Railways)

The Court made the following :

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.14851 of 2005

ORAL ORDER:

The grievance of the petitioner is that the respondent – railways is constructing a compound wall over the petitioner's land. The petitioner has filed certain documents in support of his contention that he is the owner of the land, which is now alleged to be in the process of being encroached upon by the railways. Learned counsel for the petitioner also draws my attention to an order passed by the Junior Civil Judge, Sullurpet in I.A.No.14 of 2001 in O.S.No 8 of 2001 whereby the relief of injunction sought by two persons against the petitioner herein, amongst others, was dismissed by order dated 19-2-2001. Relying on the said order, the learned counsel for the petitioner contends that since it is now held by the Junior Civil Judge, Sullurpet that the land belongs to the petitioner, the railways cannot be said to have title over the said property.

Sri R.S.Murthy, learned standing counsel for Railways, on instructions, submits that the land belongs to the railways. He further contends that disputed questions of title are not adjudicated by this Court under Article 226 of the Constitution of India and the petitioner should be relegated to approach the competent civil court.

I find considerable force in this submission. This Court in exercise of its jurisdiction under Article 226 of the Constitution of India would not, normally, adjudicate disputed questions of fact or determine questions of title. The order of the Junior Civil Judge in I.A.No.14 of 2001 in O.S.No.8 of 2001 is an interlocutory order and the respondent-railways is not even a party to the suit. Since the learned Standing Counsel, on instructions, submits that the railways owns the property in question and that it has not encroached upon the petitioner's land. The question as to who has title over the property is a question to be adjudicated after evidence is adduced by both parties in this regard. The remedy for the petitioner, if he is aggrieved, is to approach the civil court of competent jurisdiction, and not by invoking the extraordinary jurisdiction of this Court, under Article 226 of the Constitution of India.

The writ petition is accordingly dismissed. No costs.

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12-7-2005

Note:

C.C. in two days

B/o

Asp

To:

1.The Asst. Engineer, The Southern Railway, Engineering Works,

Sullurupet, Nellore District

2. The Inspector of Works (IOW)

O/o. Section Engineer Works, Sullurpet,

Nelore District

3. Two C.D copies